

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Business Meeting
January 12, 2009
Department of Environmental Quality
Metcalf Building Room 111, 1520 East 6th Avenue
Helena, MT

Board members in attendance were Theresa Blazicevich, Greg Cross, Karl Hertel, Adele Michels, Steve Michels and Roger Noble. Also in attendance were Terry Wadsworth, Executive Director, and Paul Johnson, Board attorney.

Presiding Officer Cross called the meeting to order at 10:07 a.m.

Approval of Minutes – November 17, 2008

The first item of business was approval of the Minutes of the teleconference meeting of November 17, 2008.

Mr. Noble stated that the minutes should be corrected to indicate he acted as presiding officer in Mr. Cross's absence. The record now reflects the change.

Mr. Hertel moved to accept the minutes as corrected. Mr. Noble seconded. **The motion was unanimously approved.**

Dispute of Reimbursement Adjustments – John's Laurel Service Center, Fac #56-01069, Release #4087, Laurel

Mr. Wadsworth provided a chronology of events leading to the recommended reimbursement adjustment. An inspection conducted in July 2005 identified several months of records missing for several tanks. At a re-inspection performed in August 2005, several months of records for several tanks were still missing. The facility was scheduled for a re-inspection on March 1, 2006. The inspection was never conducted. An Administrative Order (AO) was issued on July 3, 2006. The Department's records show the AO was satisfied within 71 days, on September 12, 2006. The Board staff recommends that claims be reimbursed at 50% of eligible costs, as a result of the length of the AO.

Guy Larango, Olympus Technical Services, representing the owner, John Munro, addressed the Board. Mr. Larango stated that the owner, Mr. Munro, was missing several months of records from the automatic tank gauging system (ATG) because the tank levels were too low to allow an approved test. He did not submit those tests because he thought they had failed. One tank passed all tests, but several passed intermittently, when there was an adequate level of fuel in the tanks. Mr. Munro was away from the business fighting fires between June and September 2006. The AO was issued in July 2006. He provided the records he had and paid the administrative penalty as soon as he returned from fire duty.

Presiding Officer Cross asked if the difficulty with the reports had begun before Mr. Munro purchased the facility.

Mr. Larango said it did. The previous owner installed cathodic protection instruments in 1998. When the instruments were installed, the installer noticed some impacted soil and reported it to DEQ. After some time, the previous owner, Mr. Powers, removed some tanks and the release was confirmed in July 2002. Release eligibility was approved in July 2002, four years before Mr. Munro purchased the property and eligibility was transferred to him. Mr. Larango stated that the penalty seems excessive for the release that occurred before Mr. Munro took ownership and the tank records that have been submitted since the AO was issued indicate that the tanks did not leak. Mr. Munro is being required to pay costs for a release that occurred before he owned the property.

Additional investigation and monitoring is going to be required at the site. Mr. Munro does not have the resources to pick up those costs. He did comply and pay the administrative penalty as soon as he returned from fire fighting. There was no increased threat to the public, the tanks have not leaked since they have been under his operation, and there has been no additional cost to the fund because of his non-compliance. He requested that the release be reinstated at 100% reimbursement, as has been done for other facilities, such as Bob's Valley Market. This is essentially a record-keeping issue that did not cause any more harm to the environment or impact to the fund.

Mr. Munro stated that he purchased the property in February 2005. His manager was supposed to be keeping the tests up. The inspection revealed missing records that Mr. Munro did not know about, and then it took 12 months to have the 12 months of records required. His records are in compliance at this point.

Mr. Noble asked for an explanation of the additional investigation that needs to be done.

Mr. Larango said the groundwater was impacted by the release, six wells have been installed, and the down gradient extent of the release had not been assessed. No groundwater monitoring has been done since 2006, though he anticipates additional wells and monitoring will be required. Costs already submitted to the Board total roughly \$20,000, and he anticipates at least another \$20,000 in costs in the next phase of work.

Mr. Noble requested clarification concerning the records that were missing.

Mr. Munro and Mr. Larango stated that the onsite manager, responsible for conducting the tests while Mr. Munro was fighting fires, did not conduct tests as required. The inspection revealed that several leak detection records were missing, and Mr. Munro was not sure whether the manager submitted records of tests that failed due to low levels of product in the tanks. Mr. Munro began submitting test results to DEQ monthly, as required, after issuance of the AO. It took 12 months to produce the necessary testing records to come into compliance. During this time he also conducted tightness tests and cathodic protection tests.

Dan Kenney, Enforcement Specialist, provided the following information from DEQ's records. The Department Issued an AO in July 2006 after Mr. Munro failed to get a re-inspection by March 2006. When the tank program received results of the initial inspection conducted in July 2005, it issued a warning letter, along with a compliance plan and a corrective action plan, which listed the violations. The plan required a re-inspection in August 2005. The August 2005 re-inspection provided some additional records, though there were still records missing. A violation letter was issued in August 2005, and required a re-inspection by March 2006. DEQ did not receive a re-inspection report by March 1, 2006, so an enforcement action was initiated and an Administrative Order issued on July 3, 2006. In August 2006 Mr. Munro submitted monthly leak detection records for the period July 2005 through December 2005. Mr. Munro could have provided the records to the Department after it issued the warning letter and before issuance of the violation letter, and thus have avoided the enforcement action. Mr. Munro paid the penalty in a timely manner and has provided 12 months of records. The Administrative Order was satisfied on September 15, 2006.

Presiding Officer Cross noted that the purchase of a petroleum fuel station carries with it regulatory responsibilities that are often not fully understood by the purchaser. This seems to be a classic case.

Mr. Wadsworth agreed and said that many purchasers are not aware of the options available to them at the time of purchase. Purchasers have the option to leave the responsibility for the environmental cleanup associated with a release that is present before a property purchase in the hands of the seller, if agreement can be made with the seller.

Mr. Munro said that he was told the prior owner had to transfer the liability to the new owner, because the records and prior activity went with the property, not with the past owner.

Mr. Wadsworth stated that many real estate agents are unaware that the environmental liability can be retained by the previous owner, if the parties can agree.

Presiding Officer Cross asked Mr. Wadsworth to review the Board's options. Mr. Wadsworth indicated that the staff recommendation of 50% reimbursement reflects the schedule provided in ARM 17.56.336 for the number of days the facility was subject to the AO. He provided the Board with a table of prior Board actions on releases with similar record-keeping violations. The law allows the Board some flexibility in dealing with these matters, based on the facts of each individual case. He asked the Board to recognize that there was potential risk to the environment as a result of the actions of the owner. The owner could have had six months of records available after the purchase and before the inspection. On the other hand, the owner has done tightness tests that show that the tanks are still good condition and have not leaked.

Paul Johnson, Board attorney, cautioned the Board that its determination in this case needed to be reasonably in line with its decisions in prior similar cases. The table Mr. Wadsworth provided should help guide the Board in determining how to address the current issue. He stated that in the last case that went to a MAPA hearing on this issue, the Cenex Milk River Coop, Cenex pushed very hard the contention that the Board had treated them differently than it had treated other similarly situated owner and operators. The Hearing Examiner ultimately ruled in favor of the Board, because the Board's records showed strong support for its decision.

Ronna Alexander, Petroleum Marketers Association, remarked to the Board that Milk River Coop was missing 72 records and was reduced by 40%, while Mr. Munro was missing 54 records and the recommendation is to reduce reimbursement by 50%. She found that disparity confusing and unfair.

Presiding Officer Cross pointed out that the staff recommendation comes directly from the table provided in the rule, and the Board has not yet make a decision in this matter. In the Milk River case, the original recommendation was for 100% reduction, which was rejected. He asked, as a point of clarification, how many of the missing records at John's Service Center were a result of product inventory too low for the test to run accurately.

Mr. Munro responded that all of the missing records were the result of that type of situation. In addition, when fuel is delivered it tends to be at a higher temperature than the tank temperature. As a result, testing needs to be delayed for about three days to allow the temperatures to equilibrate, or the test will fail due to shrinkage. There were also times when he did not have the funds to fill the tanks enough to secure an accurate test. When he received a failed test as a result of too great a temperature difference or too little product, he did not realize he needed to keep those tests. He has since learned differently.

Mr. Noble asked about the difference between the number of tanks noted in the violation letter (5) and the number of tanks at the site (8). He asked if any of the tanks were out of service.

Mr. Munro replied that as of Fall 2007 he is only using three tanks.

Mr. Kenney stated that three of the tanks had less than 12 months of records but more than nine months, which is considered a minor violation and the Department does not enforce on minor violations.

Ms. Blazicevich moved to reduce reimbursement on the release by 20%, because that correlates to the number of missing records and there was some difficulty getting back into compliance. There needs to be some consequence for not staying in compliance and managing records correctly. If you are going to be a tank operator, this is something that must be done. Leak detection is very important. If there had been a release during the time the records were not complete, it would have gone undiscovered for some time. There was effort by the owner to come into compliance, and an improvement in the number of records that were available between inspections, though there were still some problems. Mr. Michels seconded. **The motion was unanimously approved.**

At the request of the Presiding Officer Mr. Wadsworth explained the appeal procedure, should Mr. Munro choose to appeal the decision. He also stated that the 20% reduction will now apply to the current release for the life of the release. Mr. Munro will be responsible for 20% of the costs of cleanup from this point forward.

Presiding Officer Cross recommended that Mr. Munro work very closely with his consultant to develop the work plans for future cleanup in an effort to minimize expenditures.

Dispute of Reimbursement Adjustments – Holiday StationStore #274, Fac #56-08062, Releases #110 and 624, Billings

Mr. Noble recused himself from this matter due to a potential conflict of interest.

Mr. Wadsworth connected Bruce Anthony, Holiday Companies, to the meeting by telephone conference call.

Mr. Wadsworth then gave a summary of the matter. A routine compliance inspection conducted on August 15, 2007 identified numerous missing hard copy release detection monitoring records for several tanks (tanks 4, 5 and 6), though the history showed tests for tanks 4 and 5 for most months. Tank six was missing all records for nine months. A Corrective Action Plan was issued on August 27, 2007. A re-inspection conducted on October 4, 2007 again identified several months of hard copy records missing for those tanks. A second violation letter was issued on October 16, 2007, with a second Corrective Action Plan. A Notice of Violation and Administrative Order were issued January 4, 2008. The administrative penalty was paid to the Department on February 2, before the required deadline. A re-inspection conducted on May 1, 2008 identified one missing leak detection record each for tanks 4 and 5, and two months on tank 6. At a re-inspection conducted on August 28, 2008, no violations were found. The AO was satisfied on September 5, 2008, making the facility out of compliance for 245 days. The Board staff recommended that the reimbursement percentage on these releases be reduced to 0%, according to the table in ARM 17.58.336.

Jack Krueger, representing Rocky Mountain Oil, a subsidiary of Holiday Companies, addressed the Board. He stated that he felt it unfair for the Board to reduce reimbursement by 100%. The time frames set forth by the DEQ are something the owner/operator cannot control, and the re-inspections found the same violations as the original inspection because not enough time had passed to accumulate 12 months of records. There were no releases at the site during the violation period, so there were no increased costs to the Fund. The equipment (TLS 350) quit testing, and the facility lost two managers over the period, so the management current at the time of the inspection was not able to say where the records went. There was only one tank that was a problem (tank 6). The company has changed its

procedures to make sure this does not happen again. He had a re-inspection conducted 120 days after the second inspection, and Mr. Rule told him 12 months of records were required, and the inspection was unnecessary because 12 months had not passed. Within days of knowing that there was a problem, everything was back to working, but the facility could not come back into compliance in less than twelve months.

Presiding Officer Cross asked Mr. Krueger his title and years of experience.

Mr. Krueger stated that he is the maintenance manager for Holiday StationStore. Rocky Mountain Oil is a subsidiary. He has been in his position for 25 years for the same set of stores.

The routine three-year inspection came up and the inspector found that none of the records from the TLS 350 for continuous leak detection (CSLD), which are normally kept in a twelve month folder, were placed in the file. The tank history on the TSL 350 showed, for the unleaded tank, that no tests had been run. There was no alarm being giving, the system was not in alarm status, but it was not testing the tank. The other tanks were being tested. The system does not say "don't run the test", it just quit running the test for no reason that anyone has been able to identify, including the company that services the equipment. The control boards in the system were replaced in order to correct that problem.

Presiding Officer Cross asked if it would require someone on-site to have the technical understanding to be able to look at the reports being generated and identify that there was a problem. He commented that in most cases convenience stores do not have that level of expertise.

Mr. Krueger remarked that anyone should be able to look at the report and tell whether a tank has passed or failed a test, or not been tested.

Ms. Blazicevich asked if any of the tests were failures once the facility started keeping reports.

Mr. Krueger said there have been no failed tests at the site since the system has been repaired and working again. He stated that there have been changes to their procedures. The manager is required to conduct a monthly physical inspection of all the sumps, dispensers, and tanks. The procedure now requires the manager to write the results of the CSLD test on the form that is submitted to the home office and to Mr. Krueger, so they can tell that the test has been run.

For the record, Mr. Wadsworth stated that the AO was for one tank, out of compliance for 10 months. The other tank violations were considered minor, and were not part of the AO. He also noted that the Board's decision in this matter will affect two releases at the site.

Mr. Michels asked the age of the release, and where they are in the cleanup process.

Presiding Officer Cross stated that the releases were not a result of, nor during the period of the violation.

Mr. Anthony stated that the two releases are quite old and well along in the process of clean-up. Holiday Companies is hoping that DEQ will close the releases soon. A report has been submitted to the State, but there has been no response from DEQ yet.

Mr. Wadsworth told the Board that release 110 was discovered in 1990 and release 624 was discovered in 1991.

Mr. Michels moved to reduce reimbursement on the release by 10% because that is in line with prior decisions in similar circumstances, and because the violation was caused by mechanical failure of the testing system, with some human error involved. Mr. Hertel seconded. **The motion was approved, with Mr. Noble abstaining.**

There was a 10 minute recess.

Dispute of Claim Adjustment – Claim #20080917A, Town & Country Supply Assoc (Cenex), Fac #56-08161, Release 2574, Laurel

Mr. Wadsworth stated that this matter involves adjustments of \$13,589.20 to a claim at the Cenex Convenience Store in Laurel. He gave a brief summary of the adjustments and the reasons for them. The adjustments were the result of several factors, including costs over and above those approved in the work plan, costs not requested or approved in the work plan, and costs that were deemed unnecessary or unreasonable by the Board staff, including failed attempts to drill three wells.

Presiding Officer Cross said it appears that the contractor was having difficulty drilling at the site and the costs for the drilling difficulties were added to the approved work plan costs.

Mr. Wadsworth stated that "bit refusal" does occur, though it is not common, and there have been instances where a different drill rig has been required. In most instances when those problems arise, the consultant will contact the Department and modify the work plan. The law requires that, in order for an owner/operator to be reimbursed, the work must be associated with an approved corrective action plan. Part of the problem with some of the costs in this instance is that the additional costs were not included in the approved work plan. The staff's concern with this matter is that the consultant conducted operations outside the scope of the work plan and did not get a modification of the work plan before doing the work. In addition, there have been three sets of wells installed at the site. Two sets were installed using a drilling subcontractor. No drilling difficulties were encountered by the subcontractor. The most recent set of wells was installed using the contractor's own drill rig, without the use of a drilling subcontractor, and the contractor encountered significant difficulty with heaving sands. The staff looked at all the work plans in the Laurel area to see if there have been other instances of heaving sands or bit refusal, and did not find any. The two pieces that are unreasonable about this claim are the activities that were not part of the approved corrective action plan and the fact that the costs are unreasonable because there have not been similar difficulties at the site or in the area in the past.

Michael Bullock, Environmental Department Manager for Terracon Consulting, addressed the Board and said that the drilling contractor used in this instance is a Terracon-owned company, and that the manager has 25 years of experience. Mr. Bullock also has 10 years of drilling experience. He stated that he had been in frequent contact with Dave Cattrell of the Petro Board staff, notifying him of the drilling difficulties. He described the conditions as "heaving sands conditions" which occurs when the saturated medium consists of cobbles, boulders, gravels and interstitial sands. The sands will flow up into the auger making well installation impossible. The decision was made to over-drill to bedrock, approximately 35 feet in order to seal the sand from getting into the well. This worked for some of the wells, but not for others. This explains the increased personnel costs. This site was a gas station that was demolished last year and rebuilt. In that process, two wells were destroyed. The owner was to pay for replacement of those two wells. A total of seven wells were drilled. Terracon decided to split the costs by attributing two-sevenths of the costs to the owner and the remainder to a claim to the Petro Fund. The work was done during the summer months and the facility is on a very busy intersection. An effort was made to impact the business of the owner as little as possible by getting the work done as quickly as possible. The waste handling costs were not part of the work plan, but there were numerous drums of contaminated groundwater and soil generated during the drilling. The location of the facility and volume of waste did not allow them to leave the waste on site. The subcontractor costs that were not in the work plan were for a vacuum extraction contractor that was required because the drilling locations required by DEQ increased the possibility of intersecting a product line or tank that could not be traced. He reiterated that Terracon was in contact with Mr. Cattrell throughout the process.

Mr. Noble described for the Board the process of drilling a well and some measures that can be taken to solve the problem with heaving sands. He also said it appears Terracon did not follow the usual protocol of contacting the DEQ case manager when difficulties are encountered, securing approval for additional work and completing a Form 8, signed by the consultant, DEQ and the Board staff.

Mr. Bullock stated that Terracon had taken those measures. They did not anticipate the need to over-drill the wells because they had not encountered the problems in the past. In addition, he said Mr. Cattrell told him a Form 8 was not required in this case.

Mr. Wadsworth stated, for clarification, that Mr. Cattrell is a member of the Board staff, who reviews claims and work plans for the Board. The Board does not approve Corrective Action Plans; the Department of Environmental Quality approves the technical activity that needs to be performed at the site. During conversations on this matter, Mr. Cattrell told Mr. Wadsworth that he had informed Terracon they needed to be working with the Department case manager to address the issues encountered at the site.

Mr. Bullock indicated there have been personnel changes in the DEQ Billings office, and he was not sure who the case manager was for this site at the time. Mr. Bullock was in contact with Mr. Cattrell while Mr. Nebel, also of Terracon, was in contact with the DEQ Billings office.

Mr. Wadsworth directed the Board to §75-11-307(1)(a), which requires the Board to reimburse for "corrective action costs as required by a department-approved corrective action plan...." The Board staff recognizes a Form 8 (Workplan Modification) as fulfilling the requirement for an approved corrective action plan before the costs are incurred when difficulties are encountered at a site, in order to remain within the law.

Mr. Noble stated that he felt the matter should be remanded back to DEQ to follow the usual process and complete a Form 8 before the Board addresses the adjustments to the claim.

Sandi Olsen, DEQ Remediation Division Administrator, stated that it appears some of the difficulties were encountered at the same time the personnel changes were occurring at the DEQ Billings office and that resulted in procedural errors. She said DEQ would review its records and bring any pertinent information to the Board at its next meeting.

Mr. Noble moved to table this matter and ask that DEQ review their files for telephone logs, correspondence and other documentation in support of the adjustments, and that a Form 8 be filed and reviewed by the staff prior to the matter returning to the Board. Mr. Hertel seconded. **The motion was unanimously approved.**

Eligibility Ratification

Mr. Wadsworth informed the Board of the applications for eligibility that are before the Board. The staff recommended that two releases be determined eligible. The third facility listed in the table filed a voluntary registration, as there was no release currently at the site. (See table below).

Board Staff Recommendations Pertaining to Eligibility From November 6, 2008 thru				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Great Falls	Poulsen's Lumber	N/A	N/A	Voluntary Registration 11-12/08
Billings	Conomart #6	56-06958	4613 May 2007	Eligible – 12/3/08
Hungry Horse	Bob's General Store	15-07506	3168 June 1997	Eligible – 12/16/08

Ms. Blazicevich moved to ratify the eligibility applications as listed. Ms. Michels seconded. **The motion was unanimously approved.**

Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 reviewed since the last Board meeting. (See table below). There are four claims totaling an estimated \$480,765.34. He pointed out that the Board tabled the first claim until the March 2009 meeting. Two of the claims in this table, the Cenex in Havre and the Pop Inn in Townsend, are subject to an Administrative Order penalties of 40% and 90% of the eligible amount claimed, respectively.

Mr. Noble moved to ratify the claims greater than \$25,000 listed in the table, with the exception of claim #20080917A for the Cenex in Laurel. Mr. Hertel seconded. **The motion was unanimously approved.**

Ms. Blazicevich abstained from the vote because she worked for Ravalli County for a time.

CLAIMS OVER \$25,000.00							
Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Adjustments	Co-pay Met with this claim	**Estimated amount to be reimbursed
Laurel	Cenex	5608161	20080917A	\$25,931.06	\$13,589.20		\$12,341.86
Havre	Cenex	2107467	20080924O	\$142,424.99	\$56,970.00 40% A.O. Penalty		\$85,454.99

Table continued . . .

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Adjustments	Co-pay Met with this claim	**Estimated amount to be reimbursed
Townsend	Visocan Petroleum Pop Inn	407127	20081022G	\$241,129.89	\$220,728.94 including 90% A.O.		\$20,408.95
Hamilton	Ravalli Cnty Road Dept	4106546	20081024H	\$71,279.40	\$4,605.07	X	\$49,174.33
Total				\$480,765.34			\$167,380.13

Weekly Reimbursements

Mr. Wadsworth presented the summary of weekly claim reimbursements for the weeks of November 5, 2008 through December 10, 2008 to the Board for ratification. (See table below). There were 111 claims, totaling \$1,016,992.27.

WEEKLY CLAIM REIMBURSEMENTS January 12, 2009 BOARD MEETING		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
November 5, 2008	48	\$97,566.16
November 12, 2008	32	\$150,698.42
November 19, 2008	6	\$223,385.20
November 26, 2008	8	\$151,369.69
December 10, 2008	17	\$393,972.80
Total	111	\$1,016,992.27

There was one denied claim (#20010620E), for Kelly's Service in Choteau. The claim was denied because costs for the cleanup were paid for by an insurance provider.

Presiding Officer Cross noted that the aggregate amount paid during this period is very large.

Ms. Michels remarked that she strongly disliked seeing one owner/operator with 16 claims paid in one week, all of which are for amounts just below the \$25,000 limit that triggers review of the work by the Board. She commented that it appeared the owner/operator was working to beat the system.

Paul Hicks, Petroleum Board Section Manager, stated that the work was done pursuant to a work plan approved in 2006, so the work could not be pre-approved by the Board, as has been done in other instances recently. This was a massive soil excavation at the Cascade County site in Great Falls. The work was all done during the 2008 construction season.

Mr. Wadsworth stated that the claims are paid in the order of final approval by the Board. The staff recognized that this work plan would take approximately two months of claims budget to reimburse, and that there were several other consultants whose claims that would be delayed as a result of this work plan. In this case, the cost of the excavation has exceeded the one million dollar cap on reimbursements from the Fund, and there is more work to be done. If the Board would like to change the manner in which these types of situations are handled, he would investigate alternatives.

Presiding Officer Cross remarked that, while the Board knew this work plan was in existence, it took them by surprise. The Board has changed its procedures to allow review of large work plans before the work begins. The owner/operator in this case is also a local government entity. He suggested that the Board may wish to establish a procedure to allow that costs for large work plans, payable to one entity, particularly a government entity, may be reimbursed on a payment schedule so that payments to other entities are not delayed so significantly.

Mike Trombetta, Hazardous Waste Cleanup Bureau Chief, told the Board that the City of Great Falls obtained a hazardous waste Brownfields grant to help redevelop a portion of the city that includes this site. This site is also a State Superfund site.

Mr. Hertel moved to ratify the weekly reimbursements as presented. Ms. Michels seconded. **The motion was unanimously approved.**

2009 Proposed Legislation

Mr. Wadsworth presented the current proposed legislation to the Board. The Board's legislation has been identified as SB 97. The bill contains measures to: institute a one year statute-of-limitations for eligibility application; institute a 30 day statute-of-limitations to contest a Board decision; require a co-pay for double wall tanks equal to the co-pay for single wall tanks; provide an insurance incentive that allows an owner to use his insurance towards the co-pay; and, change the fund balance controls to increase the floor from four to six million dollars, and the ceiling from seven to eight million dollars.

The staff has learned that the Petroleum Marketers Association does not support the bill as currently written. Though there are on-going discussions on the matter, the statute-of-limitations provisions are not acceptable to the Marketers. Mr. Wadsworth provided some suggested language changes, drafted by Allan Payne, the Board's subrogation program attorney, for the Board to consider. Among the reasons for instituting a one-year statute of limitations is the eight year rule imposed by the Supreme Court on subrogation claims. Another is the need to define and control the Board's long-term liabilities, as recommended by the 2003 Audit report. This provision would limit the unknown liabilities. In addition, should an eligibility determination be appealed, the facts surrounding the release and the determination would be fresh and more easily ascertained. It would also allow the Board to develop a method to help owners/operators to recover costs from their insurance before submitting to the Fund. Mr. Payne and Mr. Bruner, who is assisting the Marketers, developed language to address the Board's ability to subrogate claims. Mr. Payne had told Mr. Wadsworth that if the language proposed for a new 75-11-307(6) were adopted, the current proposed language for 75-11-308(1)(d) and 75-11-308(3) would not be necessary.

Mr. Johnson expressed concern that the suggested language change for 75-11-307(6) would limit the time the Board has to file a subrogation claim. He would like to get clarification of his concerns from Mr. Payne and Mr. Bruner. In addition, the one-year provision will affect the Board's business plan, and that should be considered before removing the proposed one year limit from the legislation.

In regard to the 30-day statute of limitations for filing an appeal from a Board decision, Mr. Johnson stated that DEQ, as well as other agencies, has such a statute of limitations in its law. Therefore, the provision is not unreasonable, and would be helpful for the staff as part of the business operation.

Ronna Alexander, Petroleum Marketers Association, stated that she had just seen the language proposed by Mr. Bruner and Mr. Payne that morning and had not had an opportunity to evaluate the language. She stated that she believes the legislation, as drafted, puts more onus and hardship on the industry without addressing the Board's funding issues. She is concerned that a statute of limitations will result in people falling through the crack. The Fund was developed to help clean up problems. She does not believe this will help assess liabilities. The Marketers will oppose the bill as written.

Presiding Officer Cross explained a scenario, as an owner/operator, that provided support to the Marketers' concerns about the statute of limitations.

Mr. Johnson remarked that it is possible that the Board could establish limitation periods by rulemaking, but since that authority is not specifically granted by the statute, it seemed a better approach to address the matter in the statute. The limits proposed in the legislation are not arbitrary, but are modeled on time limits other agencies use.

Mr. Noble asked if the statute of limitations provisions were the main deterrent to the Marketers' support for the legislation.

Ms. Blazicevich stated that she does not feel the legislation as currently written addresses the Fund's difficulties. It addresses housekeeping measures, but does not go far enough. The legislators need to hear that the Fund is in trouble and contamination will not be cleaned up until the funding issue is addressed.

Mr. Wadsworth noted that the EQC/LFC subcommittee that examined the Fund and the Board issued a report on their investigations that contained no recommendations. It appears that no one is currently ready to make hard decisions.

Mr. Wadsworth acknowledged the validity of the Marketers' concerns. And that their representative had not had sufficient time to evaluate the proposed language changes, so he suggested that the Board arrange a teleconference Board meeting in the next two weeks, after everyone has had time to consider the suggested changes.

The matter was tabled until a teleconference meeting was arranged. (January 20, 2008)

Board Attorney Report

Mr. Johnson updated the Board on the Cenex Supply and Marketing-Havre case. In November, 2008 the Board ratified the Hearing Examiner's proposed decision. Cenex was advised of their right to seek judicial review of the Board's decision, and they did not seek judicial review. The case is now closed.

Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal pending because cleanup of release completed.
Thompson Falls	Feed and Fuel	45-02633 Release #3545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release #03980	Eligibility 2/19/02	Case stayed.
Belt	Main Street Insurance	07-01307 Release #3962		Eligibility tabled 6/25/01 currently insurance coverage
Great Falls	On Your Way	07-09699 Release #3633	Reimbursement adjustment	Hearing requested 2/15/07 Awaiting identification of attorney
Lewistown	On Your Way	14-09853 Release #3790	Eligibility contested	Hearing requested 2/15/07 Awaiting identification of attorney
Whitefish	Stacey Oil - Don Gray	15-04428 Release #1034	Reimbursement adjustment	Hearing requested 2/15/07 Awaiting identification of attorney
Havre	Cenex Supply & Marketing	21-07467 Release #826	Reimbursement adjustment 8/14/07	Board to vote on HE Order
Kalispell	City Service West	15-02330 Release #1208	Eligibility Contested 12/6/07	Hearing requested 12/6/07 Awaiting identification of attorney
Hamilton	North Star Aviation	99-95007 Release #4668	Eligibility contested 9/23/08	Hearing requested 9/23/08. Awaiting identification of attorney

With regard to the cases awaiting identification of an attorney, Mr. Johnson explained that there are legal rules in Montana that require an attorney to represent a corporation when it appears in court or at an administrative hearing. Several of the cases noted in the table below are on hold, awaiting identification of an attorney before moving forward

with the hearing process. He recommends that he and the staff develop a plan to address these pending cases, and bring the plan to the next Board meeting. Leaving the cases in suspense makes it difficult for the Board to determine its potential liability and allows evidence to get old.

Fiscal Report

Mr. Wadsworth presented the fiscal report as of November 30, 2008. He pointed out that expenses are running in line with the revenue received. Revenues are a little below budget, but this is a slow period of the year for revenues and he expects revenues to increase as the weather improves. Overall, however, he expects total annual revenues to remain flat when compared to FY 2008.

The current amount owed on the 2002 and 2007 loans is \$1,390,776. There are currently \$1.8 million in claims waiting to be paid, and \$1.9 million in work plans waiting to be obligated. He noted that some of the claims waiting to be paid are for the Cascade County property, which will meet its \$1 Million cap before all those claims are paid, so the \$1.8 million figure is slightly inflated. The work plans that are awaiting obligation have been included in the Governor's "shovel-ready" projects submitted to Washington for potential inclusion in the President's pending stimulus package. If any money returns to the State through that stimulus legislation earmarked for the PTRCB program, some of the work plans could be obligated.

Mr. Wadsworth presented a graph of the number of tank closures, confirmed releases and releases that have applied for eligibility since the inception of the Fund. For the early years of the Fund, there is a significant difference between the number of releases confirmed and the number of eligibility applications. This is the area that presents the greatest challenge in determining the potential liabilities of the Fund, since at present there is no time limit for eligibility application. Some of the old releases will be a factor in property transfers in the coming years, and eligibility applications will be received for those releases.

Board Staff Report

Mr. Wadsworth presented the Board staff report. He pointed out that release eligibility applications are down compared to 2007. There were no questions on the report.

Petroleum Technical Section Report

Mr. Trombetta provided the PTS report. He explained the modifications to the report format. In response to a request by Ms. Blazicevich, a line has been added to the table of release activity showing the total number of eligible sites. The report will also contain a narrative section answering any questions the Board asked at the previous meeting, and a section providing a brief description of any work plans for amounts greater than \$100,000 that are pending obligation by the Board staff.

For calendar year 2008, there were 24 confirmed releases, and 60 releases were resolved. This report also included a table showing the sources and causes of releases for the federal fiscal year (October 2007 through September 2008.) Most of the releases were gasoline, with diesel fuel second. Most of the releases occurred from product piping. Due to the number of historical contamination releases found, "unknown" is the largest "cause" category.

Mr. Trombetta responded to questions and concerns from the previous Board meeting, as follows:

There is currently a work plan for \$140,000 for continuing work at the Michael's West release in Kalispell (Release #4587). The work plan includes monitoring and installation of an air sparging vapor extraction system

No further excavation work is anticipated at the Elmer's site in Great Falls (Release #4355). The remaining groundwater contamination will be monitored as it naturally attenuates.

The Dicks 24th Street Conoco (Release #1451) is being monitored on an annual schedule. It has not received a No-Further Action letter.

DEQ's Technical Guidance Documents that address the investigation and cleanup of petroleum releases are used as communication tools to explain requirements based in rules and statutes. They do not add additional obligations that are not already required in rules and statutes.

Mr. Hertel commented that the Elmer's site ceased operation as a gasoline station in 1984, and 24 years later the majority of the contaminated soil was removed. Is it still necessary to install monitoring wells and monitor it for many

years? Why can it not be closed? He feels that monitoring it is a waste of money. It is expensive and does not accomplish much. It is on a public water system, so no water supply wells will be used. Common sense seems to indicate that the site should be closed.

Mr. Trombetta stated that the site cannot be closed until the groundwater is clean. The Department is not able to tell when the groundwater is clean without monitoring. He stated that the State of Montana monitors less than most other states. DEQ monitors every three years in monitored natural attenuation. DEQ has interpreted the Water Quality Act to require sites to remain open as long as there are any contaminants above standards.

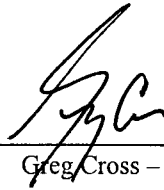
Mr. Noble explained that other states have a risk-based corrective action (RBCA) program, which EPA allows, that would allow a site to be closed as long as there is no receptor that would be harmed by contamination left in place. Montana does not have such a groundwater RBCA program.

Mr. Trombetta remarked that DEQ is working on its RBCA program, but it will only relate to the soils, not groundwater. It will require a statute change to develop such a program for groundwater.

Ms. Olsen stated that another factor in the RBCA discussion is that the State of Montana regulates groundwater, which many other states do not.

Public Forum

The meeting adjourned at 2:26 p.m.



Greg Cross – Presiding Officer

3/16/09